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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 705

COMPETITION IN THE RAILROAD INDUSTRY

**COMMENTS OF
DIVERSIFIED CPC INTERNATIONAL, INC.**

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May 27, 2011

Diversified CPC International, Inc. (Diversified CPC) is a manufacturer of blowing agents for the plastic foam industry, propellants for consumer aerosol products, and various specialty gases, headquartered in Channahon, IL. Diversified CPC has six manufacturing and distribution facilities in North America with 48 employees. Diversified CPC relies on Class I railroads for inbound shipments of raw materials and to deliver products to customers.

The purpose of this statement is to address some of the issues presented in initial comments in this proceeding.

Since 1998, Diversified CPC has contracted a third party, Highroad Consulting, Ltd. to manage our rail transportation. I believe Highroad has done a good job controlling our transportation costs. However, there have been instances where we have been at the mercy of the rail carriers and as a result, we have lost business. Our relationship with Burlington Northern Santa Fe has improved dramatically in recent years - still, we know we cannot take any relationship for granted as people change, and corporate policies change. For this reason, I decided to participate in this proceeding as there are issues that need to be addressed, and we need to confirm that rules and procedures are in place so we have protection from market abuse and practical, affordable recourse should we need it in the future.

In the notice announcing this proceeding, dated January 11, 2011 and later modified February 4, 2011, the Board requested comments on the current state of competition in the railroad industry and possible policy alternatives to facilitate more competition, where needed. The Board asked parties to focus comments on

multiple topics including (1) the financial state of the rail industry; (2) alternative through routes; (3) terminal access; (4) reciprocal switching; (5) bottleneck rates; and (6) access pricing standards. While the statement I will prepare for the hearing will be more comprehensive, these reply comments will touch on two key areas:

- The current rate reasonableness rules, bottleneck rules, and competitive access.
- Unreasonable practices.

Rate Reasonableness, Bottleneck, and Competitive Access

Of significance is the fact that two federal agencies, The Department of Transportation and the Department of Justice, submitted, "Captive shippers have consistently charged in recent years that their rates and/or services are often unreasonable and that existing precedent often offers them no real protection. They allege as well that.....the costs of pursuing a rate case remain high, particularly for shippers of a variety of commodities going to numerous destinations. ¹

One of the reasons Diversified has been challenged when trying to control rail costs, is almost all of the origins and destinations are captive to one carrier. A review of our total shipments revealed that 100% of our rail business is in lanes where there are bottleneck carriers at origin and/or destination. We support the joint comments of Agricultural Retailers Association, et. al., asking the Board to create some additional competitive marketing alternatives to shippers, and to consider variable cost thresholds for switching costs.²

¹ United States Department of Transportation and United States Department of Justice Initial Comments, STB Ex Parte No 705, p. 3.

² Joint Comments of Agricultural Retailers Association, National Association of Wheat Growers, National Barley Growers Association, National Chicken Council, National Corn

Even though Diversified CPC is considered a leader in the aerosol propellant industry, Diversified is considered a small shipper. We have 37 rail lanes; volumes in those lanes range from one (1) to 181 carloads annually. Even though the Board has developed new proceedings and standards for small rate cases, the litigation costs would outweigh the potential gain so they offer no practical recourse for small shippers like Diversified CPC.

Unreasonable Practices

Fuel surcharges continue to be a problem, they continue to be profit centers for the railroads, and shippers are required to pay for fuel costs that have no relationship to the freight they are shipping. Therefore, they constitute an unreasonable practice.

One of the problems with the railroads' fuel surcharge programs is the way they apply the surcharges. The railroads have established inter-carrier agreements to apply the origin carrier's fuel surcharge on the through route, even though the Board instructed the carriers to change their fuel surcharge program to reflect actual fuel cost increases³, even though fuel costs differ for each carrier.⁴ As a result, the fuel surcharges do not comply with the Board's decision to assess

Growers Association, National Cotton Council, National Council of Farmer Cooperatives, National Grain and Feed Association, National Oilseed Processors Association, Renewable Fuels Association, The Fertilizer Institute, USA Rice Federation, STB Ex Parte No. 705, *Competition in the Rail Industry*, pp. 4-5.

³ Decision Notes, Surface Transportation Board Decision Document, EP 661-0, Rail Fuel Surcharges, p. 1 "(1) Stipulated that a carrier wishing to assess what purports to be a fuel charge would need to develop a means of computing the surcharge that is more closely linked to the increases of its fuel cost that is attributable to the movement to which the fuel surcharge is applied..."

⁴ Differences in fuel costs are confirmed in the railroads' quarterly fuel surcharge reports and in the annual R-1 financial reports to the Surface Transportation Board.

surcharges that are more closely linked to the increases of its fuel cost that is attributable to the movement to which the fuel surcharge is applied.

Further, since the railroads' fuel surcharge programs have been in effect since 2002, we believe the fuel surcharges should be subject to Board review and the real question is whether or not the carriers should continue to assess fuel surcharges.

It is reasonable to expect that fuel costs would have increased over the past nine years, even without a fuel crisis. Therefore, it is not reasonable for shippers to compensate the carriers for the total fuel cost increase that has occurred since 2002. A potential alternative is to calculate the difference in fuel costs after factoring in the normal cost of inflation. If that were the case, the surcharges could be considered fair to both parties and the surcharges would be reduced significantly. However, since 2002, rates that were based on costs that included a cost component for fuel, have undergone a series of annual rate increases and the railroads have modified their fuel surcharge programs after rolling former fuel surcharges into the rates. This practice has produced higher base rates so subsequent rate increases are also higher as they are applied to higher base rates. We submit the rail fuel surcharge proceeding should be re-opened and the surcharges should be subject to Board review to consider potential changes or cancellation of the fuel surcharge programs.

Another unreasonable practice is the AAR rule regarding mileage equalization. The rule provides that carriers in the United States will haul empty cars for a maximum 106% of the loaded miles. The *"Penalty Rate Per Mile"*

assessed against car owners and shippers for empty miles that exceed the 106% threshold on a calendar basis is \$0.65 per mile, even though the cars should be reverse routed but move via alternative routes for railroad convenience, and even though car owners and shippers have no control over the routing of the empty cars. Further, it seems there is no incentive for the railroads to be more efficient when routing the empty cars.

Highroad audits the mileage equalization bills received by Diversified CPC, and they have been successful when negotiating mitigation of charges. However, this is a labor intensive process and over the long term, the extra miles result in additional maintenance and repairs, thereby impacting on the efficiency of our tank car fleet.

It is my understanding that a group of shippers filed a petition with the STB, asking the Board to determine the reasonableness of the calculation of mileage equalization charges⁵. However, that petition is on hold pending mediation. We support the Complainants' position in this proceeding and encourage the Board to review this unreasonable practice and the impact it has on all tank car owners and shippers.

⁵ STB Docket NOR 42117, *Cargill, Inc.; Exxon Mobil Corporation; Jones-Hamilton Co.; PPG Industries, Inc.; Reagent Chemical and Research, Inc. v. Aberdeen & Rockfish Railroad Company; Baltimore & Ohio Chicago Terminal Railroad Company; BNSF Railway Company; Boston & Maine Corporation; Buffalo & Pittsburgh Railroad, Inc.; Canadian National Railway; Canadian Pacific Railway; Cedar Rapids and Iowa City Railway Company; Central Washington Railroad Company; CSX Transportation Inc.; Elgin Joliet & Eastern Railway Company; Gary Railway Company; Indiana & Ohio Railway Company; Iowa, Chicago & Eastern Railroad Corporation; Iowa Northern Railway Company; Kansas City Southern Railway Company; Maine Central Railroad Company; Montana Rail Link, Inc.; New York Susquehanna and Western Railway Corp.; Norfolk Southern Railway Company; Pan Am Railways, Inc.; Portland Terminal Company; Rochester & Southern Railroad, Inc.; Sandersville Railroad Company; Springfield Terminal Railway Co.; Union Pacific Railroad Company; Association of American Railroads; RailInc.*

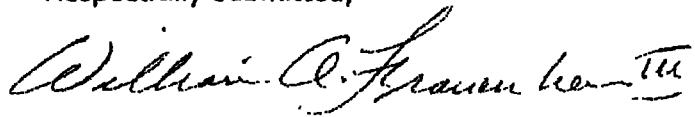
CONCLUSIONS

Diversified CPC commends the Board for initiating this timely proceeding to receive information regarding the state of competition in the railroad industry. The business landscape of the railroad industry has changed significantly since the 1980's and competition has been eliminated. The current concentrated rail market warrants a formal review of its rules and policies regarding rail-to-rail competition, unreasonable practices, and related rules such as rate reasonableness standards. Such rules and policies should be modified to encourage development of meaningful rail-to-rail competition. In summary,

1. We encourage the Board to create some additional competitive marketing alternatives to shippers including practical solutions for small shippers. Potential alternatives include simple access to reciprocal switching and variable cost thresholds for switching costs.
2. Fuel surcharges continue to present a problem. STB Ex Parte 661, Rail Fuel Surcharges, should be re-opened and the railroads' fuel surcharge programs should be reviewed for potential change or termination.
3. The AAR mileage equalization rule should be reviewed as a potential unreasonable practice.

I appreciate the opportunity to comment on competition in the railroad industry, and we are hopeful that the information Diversified CPC has and will submit in this proceeding will contribute to the process that will lead to a comprehensive decision that will address these difficult and challenging issues.

Respectfully submitted,

A handwritten signature in cursive script, reading "William A. Frauenheim III". The signature is written in dark ink and is positioned above the printed name.

William A. Frauenheim III
Vice President, Operations
Diversified CPC International, Inc.